IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKHAT SRINAGAR

Reserved on: 14.03.2024
Pronounced on:29.03.2024

CM(M) No.277/2023
CM Nos.6535/2023 & 7438/2023

SWEETY RASHID & ORS. ...PETITIONER(S)

Through: - Mr. Shafqat Nazir, Advocate, with
Mr. M. D. Bhat, Advocate.

Vs.

BILAL AHMAD GANIE & OTHERS …RESPONDENT(S)

Through: - Mr. M. A. Qayoom, Advocate, with
Mr. Tauseef Joo, Advocate.

CORAM:HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) The petitioners through the medium of present petition under Article 227 of the Constitution of India have impugned the order dated 30.09.2023 passed by the learned Additional Sessions Judge, Budgam (hereinafter referred to as "**the Appellate Court**") whereby the order dated 20.05.2022 passed by the Court of learned Chief Judicial Magistrate, Budgam (hereinafter referred to as "**the Trial court"**) dismissing the application filed by the petitioners under section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter for short referred to as "**the DV Act**") on account of lack of territorial jurisdiction, has been upheld.

2) The orders dated 30.09.2023 passed by the Appellate Court and 20.05.2022 passed by the Trial court have been impugned by the

petitioners on the ground that the learned Appellate Court has ignored the intent and object behind the DV Act and has without any need and justification subjected the evidence of the petitioners to hair-splitting analysis as if the learned Appellate Court was conducting a murder trial. It is stated that the learned Appellate Court has discussed the concepts of license and lease and also thoroughly analysed the title of landlord to the tenanted accommodation as if it was deciding the question of title of the property. It is also urged by the petitioners that their application could not have been dismissed on the ground of lack of territorial jurisdiction as the lack of territorial jurisdiction does not go to the root of the matter and the learned trial court ought to have returned the application filed under the DV Act to the petitioners for filing the same before the appropriate court, assuming it had no jurisdiction to entertain and try the application filed by the petitioners.

3) The respondents have filed the response to the petition and have raised a preliminary objection that the present petition against the concurrent findings of fact recorded by the trial court as well as by the Appellate Court, is not maintainable as the scope and ambit of jurisdiction under Article 227 of the Constitution of India is very limited and the High Court while exercising its power under Article 227 of the Constitution of India cannot re-appreciate the evidence and upset the concurrent findings of fact recorded by the two courts. The respondents have submitted in detail the factual aspects of the case, which may not be relevant for the purpose of adjudication of the present controversy, however shall be

extracted herein after, as and when required. The precise stand of the respondents in their objections is that both the orders impugned have been passed by the Trial court as well as by the Appellate Court well within the domain of law after due appreciation of evidence led by the parties in respect of territorial jurisdiction of the trial court to entertain and adjudicate the application filed by the petitioners under DV Act. The respondents in their response have mainly laid stress upon the conduct of the petitioner No.1 to demonstrate that the petitioner No.1 had been abusing the process of law time and again, not only by filing the application under Section 12 of the DV Act before the court which lacked the territorial jurisdiction but also the subsequent transfer application with ulterior motive.

Arguments

4) Learned counsel for the petitioners submitted that the learned trial court while dismissing the application filed by the petitioners under DV Act has passed the order on assumptions and has expressed unnecessary doubt upon the rent agreement placed on record by the petitioners while returning a finding that the same is an outcome of an afterthought to plug the loopholes. He further vehemently argued that the learned Appellate Court while passing the order impugned has gone into the issue of determining the admissibility of the document and has gone to the extent of commenting upon the ownership of a landlord vis-à-vis the property rented out to the petitioner No.1. He further submitted that assuming for the sake of arguments that the trial court lacked the jurisdiction, the application filed by the petitioners ought to have been returned to them for

filing it before the appropriate court having territorial jurisdiction as under Section 28 of the DV Act, the Magistrate is free to devise its own procedure for the purpose of deciding the application under DV Act. He placed reliance upon the judgment of High Court of Judicature at Madras in the case of **Rammohan & another vs. Harika Raju & Ors** (CRP (PD) No.2089 of 2022 decided on 08.07.2022) and judgment of the High Court of Himachal Pradesh, Shimla, in the case of **Sanjeev Kumar& Ors. Vs. Sushma Devi** (Cr. Revision No.132 of 2021 decided on 01.06.2023).

5) *Per contra*, Mr. Qayoom, learned counsel for the respondents submitted that the jurisdiction under Article 227 of the Constitution of India cannot be exercised in an ordinary manner and that too when the disputed facts are involved and the concurrent findings have been returned by the two courts. He further submitted that the rent agreement was managed by the petitioner No.1 so as to establish her temporary residence at Mochwa Chadoora Budgam. He further submitted that the petitioner No.1 had earlier filed transfer petition for transfer of the application filed under DV Act but the said application was dismissed by this court. He further submitted that in the civil suit filed by the petitioner No.1, she has shown herself as a resident of Wuyan Pampore and the said suit was filed after she filed the application under DV Act. Mr. Qayoom relied upon the following judgments of the Supreme Court, Bombay High Court and this Court:

a. **Babtmal Raichand vs. Laxmibai R. Tarte and Ors. AIR 1975 SC 1297;**

b. **Garment Craft vs. Prakash Chand Goel, (2022) 4 SCC 181**

c. **Bhagwandas and another vs. Kamal Arbol & Ors. AIR 2005 SC 2583;**

d. **Ramesh Mohanlal Bhutada & anr. Vs. State of Maharashtra and Ors. 2011 CrLJ 4074**

e. **Jali Begum & Ors. Vs. UT of J&K** (WP(C)No.1080/2023 decided on 19.12.2023).

6) Heard learned counsel for the parties and perused the record.

Facts:

7) The brief facts necessary for disposal of the present petition are that the petitioners filed an application under Section 12 of the DV Act before the Court of Judicial Magistrate, 1st Class, Chadoora, by demonstrating themselves as residents of Wuyan Pampore and temporary residents of Mochwa Chadoora Budgam. The learned Magistrate vide order dated 26.06.2020 granted certain interim reliefs including the residence order, which was impugned by the respondent No.1 by way of an appeal under Section 29 of the DV Act, wherein a plea was raised by the respondent No.1 that the petitioner No.1 has sworn a false affidavit showing herself to be the resident of Mochwa Chadoora in order to obtain the order, which was the subject matter of the appeal. The appeal preferred by the respondent No.1 was dismissed by the Court of learned Principal Sessions Judge, Budgam, vide order dated 17.10.2020. After the passing of interim order dated 26.06.2020 by the learned Magistrate at Chadoora, the petitioners also filed a suit before the Court of learned Principal District Judge, Pulwama, wherein they showed themselves to be the residents of Wuyan Pampore Pulwama. Thereafter the respondents submitted an application for dismissal of the application filed by the petitioners under

section 12 of the DV Act, inter alia, on the grounds that the learned court lacked the territorial jurisdiction to entertain the application filed by the petitioners and in the complaint filed by the petitioner No.1 before the National Commission for Women on 06.07.2020, the petitioner No.1 had shown her real and correct address. The petitioners contested the application on the ground that the petitioner No.1 was residing at Mochwa at the time of filing the application before the court and she continued to live in the leased accommodation. The learned JMIC, Chadoora vide order dated 26.03.2021 returned a finding that the petitioner No.1 had not resided at Mochwa Chadoora at any point of time and just to secure the jurisdiction of that Court, she had mentioned the address as Mochwa Chadoora and after retuning the said finding, the learned court dismissed the application filed by the petitioners on the ground of lack of territorial jurisdiction to adjudicate the matter.

8) The aforesaid order dated 26.03.2021 was impugned by the petitioners in an appeal and the learned Additional Sessions Judge, Budgam, vide order dated 29.04.2021 accepted the appeal filed by the petitioners and the matter was remanded back to the learned JMIC, Chadoora with a direction to decide the application on the issue of territorial jurisdiction after inviting oral and documentary evidence from the parties and after hearing both the sides afresh. The learned Additional Sessions Judge, Budgam, simultaneously, directed that all interim reliefs passed by the JMIC, Chadoora shall remain in operation. Thereafter the petitioners approached the Court of Additional Sessions Judge, Budgam,

seeking implementation of order dated 29.04.2021 and vide order dated 07.09.2021, the said Court directed the implementation of the order dated 26.06.2020 passed by JMIC, Chadoora.

9) The aforesaid orders dated 29.04.2021 and 07.09.2021 were impugned by the respondents in CM(M) No.142/2021 before this Court and vide order dated 11.10.2021, the petition preferred by the respondents was partly allowed and the impugned order dated 07.09.2021 passed by the learned Additional Sessions Jude, Budgam, was set aside and the learned trial Magistrate was directed to hear and decide the complaint expeditiously.

10) Vide order dated 28.12.2021, the application filed by the petitioner under section 12 of the DV Act was transferred by the learned Judicial Magistrate, 1st Class, Chadoora, to the Court of Chief Judicial Magistrate, Budgam, after noting the conduct of the petitioner No.1. Thereafter the petitioners filed a transfer petition bearing TrP(Crl) No.04/2022 before this Court for transfer of the application under Section 12 of the DV Act from the Court of Chief Judicial Magistrate, Budgam, to the Court of Judicial Magistrate, 1st Class, Pampore, on the ground that the parents of the petitioner No.1 had requested her to come and reside with them at Pampore. Vide order dated 25.04.2022, the learned Chief Judicial Magistrate, Budgam, was directed to prepone the date of hearing in the application and decide the issue of jurisdiction within fifteen days from the date a copy of the order was made available to the learned Magistrate.

11) Prior to the passing the order dated 25.04.2022, the parties had led the evidence in support of their respective claims vis-à-vis territorial jurisdiction of the Trial Court at Budgam. The petitioners examined the petitioner No.1, Abdul Rashid Beigh and Parvaiz Ahmad Ellahi in support of their claim whereas the respondents examined respondent No.1, Bashir Ahmad Ganai, Manzoor Ahmad Joo and Zahoor Ahmad SI. The learned trial court vide order dated 20.05.2022 dismissed the application filed by the petitioners and after taking note of the dismissal of the application filed by the petitioners, the transfer application preferred by the petitioners was dismissed by this Court vide order dated 30.06.2022. The petitioners thereafter assailed the order dated 20.05.2022 passed by the learned trial court whereby the application filed by the petitioners was dismissed on account of lack of territorial jurisdiction, by way of an appeal and the learned Appellate Court vide order impugned dated 30.09.2023 dismissed the appeal preferred by the petitioners.

Appreciation:

12) Learned counsel for the petitioners while assailing the orders passed by the courts below strenuously submitted that assuming the trial court was not having the territorial jurisdiction to entertain and try the application, the application ought to have been returned to the petitioners for its presentation before the court of competent jurisdiction.

13) Since learned counsel for the respondents has raised a preliminary objection in respect of maintainability of the present petition under Article 227 of the Constituting of India, as such, this Court deems it proper to

deal with the preliminary objections raised by Mr. Qayoom at the first instance. It has been submitted by learned counsel for the respondents that jurisdiction under Article 227 of the Constitution of India cannot be invoked to correct the error of law or fact and it is only when the courts subordinate to the High Court commit jurisdictional error that the High Court can invoke the jurisdiction under Article 227 of the Constitution of India to keep the courts subordinate to it within the bounds of their jurisdiction.

14) The Hon'ble Supreme Court of India has dealt in detail the scope of jurisdiction of High Court under article 227 of the Constitution of India to interfere with the orders passed by the courts/tribunals subject to superintendence and control of High Courts, in case titled ***Shalini Shyam Shetty v. Rajendra Shankar Patil*, (2010) 8 SCC 329** and has laid down the parameters for the High Court for exercising power under article 227 of the Constitution of India and the relevant paras are extracted as under:

> **49.** On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:
>
> (*a*) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.
>
> (*b*) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.
>
> (*c*) **High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under**

Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(*d*) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* [AIR 1954 SC 215] and the principles in *Waryam Singh* [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(*e*) According to the ratio in *Waryam Singh* [AIR 1954 SC 215] , followed in subsequent cases, **the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".**

(*f*) **In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.**

(*g*) Apart from the situations pointed in (*e*) and (*f*), High Court can interfere in exercise of its power of superintendence **when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted**.

(*h*) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(*i*) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in *L. Chandra Kumar* v. *Union of India* [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitutional amendment is also very doubtful.

(*j*) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(*k*) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(*l*) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(*m*) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(*n*) **This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance.** Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(*o*) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality.

15) From the above authoritative pronouncement of the Hon'ble Supreme Court of India it is evident that High Court cannot act as appellate court while exercising the jurisdiction under article 227 of the Constitution of India and it can show indulgence only when there is

manifest failure of justice or refusal on the part of the court to exercise jurisdiction vested in it or where the court exceeds the jurisdiction. Such jurisdiction is also to be exercised in public interest. In fact, the constitutional duty has been cast upon the High Court to ensure that the courts/tribunals subject to its superintendence and control, function within the limits of their respective jurisdictions and in the event of any jurisdictional infraction on their part, the High Court(s) can intervene under Article 227 of the Constitution of India.

16) Now this Court would examine as to whether the learned trial court has committed any jurisdictional error causing miscarriage of justice to the petitioners or not.

17) The DV Act was enacted by the Parliament in the fifty-sixth year of the Republic of India with avowed purpose to curb the domestic violence and to provide protection to the aggrieved person. Taking into consideration the object of the DV Act, a whole mechanism was put in place in the Act (supra) so as to ensure that the aggrieved person does not suffer rigmarole of trial under civil law as well as criminal law. In order to achieve the salutary purpose for which the DV Act was enacted, the Magistrate under the Act has been vested with wide powers not only to issue final orders under Sections 18, 19, 20, 21 and 22 of the Act (supra) but also to grant interim and ex-parte orders. Though Section 28 of the DV Act provides that all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 but at the same time Section 28

leaves the Court free to lay down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23 of the Act. This is deliberate departure from the normal procedural laws with intention to achieve the object of the Act so as to ensure that the aggrieved person does not get trapped in the intricacies of procedural laws. It casts an obligation upon the courts under the Act to ensure that justice to the aggrieved person does not itself become the victim of procedural laws.

18) It is true that under Section 27 of the DV Act, the aggrieved person can approach the Magistrate of first class at a place where the aggrieved person permanently or temporarily resides or carries on business or is employed and at the same time Section 27 provides that any order made under the Act shall be enforceable throughout India.

19) Now the moot question arises whether the Magistrate lacking the territorial jurisdiction to entertain the application under Section 12 of the DV Act can return the application to the aggrieved person for its presentation before the Court having the territorial jurisdiction or not? This Court in ***Khalid Amin Kohli Vs UT of J&K,*****2023 Live Law (JKL) 194,** has already held that the proceedings under the DV Act are not criminal proceedings. In ***Kamatchi v. Lakshmi Narayanan*****, (2022) 15 SCC 50,** the Hon'ble Supreme Court of India also has observed that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution.

20) Equally true is that the relief provided under the Act (supra) can be sought by the aggrieved person even in suits and other legal proceedings

before the Civil Court, Family Court or a Criminal Court. In the instant case, the petitioners have not approached the Civil Court, Family Court or Criminal Court but have chosen to approach the Magistrate independently vested with the powers and jurisdiction under the DV Act. Though the DV Act is absolutely silent in respect of the power of the Magistrate lacking territorial jurisdiction to entertain and try the application under the DV Act, to return the application to the aggrieved person for its presentation before the court having the territorial jurisdiction to adjudicate the same but Section 28 of the said Act, as mentioned above, permits the Magistrate to lay down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23 of the Act (supra).

21) Even in the Code of Criminal Procedure, prior to taking of cognizance, the Magistrate, who does not have the jurisdiction to entertain the complaint, can return the complaint to the complainant for its presentation before the Court of competent jurisdiction under Section 201 of the Criminal Procedure Code. Under Order 7 Rule 10 CPC, the Civil Court can return the plaint for its presentation before the court of competent jurisdiction.

22) It is true that there is no provision in the DV Act to return the application to the aggrieved person for its presentation before the court of competent jurisdiction but once the Civil Courts and Criminal Courts have been vested with power to return the complaint or suit, as the case may be, to the plaintiff(s)/complainant(s), then it would be a travesty of

justice if the provisions of the DV Act are interpreted in manner that the Court exercising the jurisdiction under the DV Act lacks the power to return the application for its presentation before the court of competent jurisdiction on account of lack of territorial jurisdiction to entertain and try the application, more particularly in view of subsection (2) of Section 28 of the DV Act. The dismissal of the application under the DV Act on the ground of lack of territorial jurisdiction would defeat the very purpose of expeditious disposal of the proceedings under the DV Act as mandated under sub-section (5) of Section 12 of the said Act (supra). It is settled law that the provisions of the DV Act are to be interpreted and applied in a manner so as to advance the cause of justice meaning thereby which achieves the purpose for which the law has been put into place and not in a manner which defeats the very purpose, soul and spirit of the Act. The Hon'ble Supreme Court in **Vaishali Abhimanyu Joshi v. Nanasaheb Gopal Joshi, (2017) 14 SCC 373,** has observed that interpretation of the Act should be in a manner to effectuate its object and purpose.

23) This Court is of the considered view that in the instant case even if the trial court had lacked the territorial jurisdiction, the application ought to have been returned to the petitioners for its presentation before the court having the territorial jurisdiction. The failure on the part of learned trial court to return the application to the petitioners for its presentation before the court of competent jurisdiction shall fall within the meaning of 'jurisdictional error' and, as such, amenable to the jurisdiction of this Court under Article 227 of the Constitution of India.

24) This Court would also like to observe that the mode and manner in which the proceedings have been dealt with by the learned trial court as also by the learned Appellate Court is not in accordance with the spirit of the Act. The learned trial court has decided the issue of jurisdiction by returning a finding that the rent agreement was in fact an outcome of afterthought and while returning this finding, the trial court has observed that the date of issuance of the stamp paper is 26.12.2019 whereas the rent deed has been executed on 23.06.2020 and as per rules, all stamp papers expire on 31st March of every year and un-used stamps are to be deposited back into the treasury and, as such, there was no occasion to draft the rent deed on an expired stamp paper. The observations and the finding returned are contrary to the judgment of the Hon'ble Supreme Court in **Thiruvengadam Pillai v. Navaneethammal**, **(2008) 4 SCC 530**, wherein it has been held as under:

> ***Re: Question (i)***
> **11.** The trial court and the High Court have doubted the genuineness of the agreement dated 5-1-1980 because it was written on two stamp papers purchased on 25-8-1973 and 7-8-1978. The learned counsel for the first respondent submitted that apart from raising a doubt about the authenticity of the document, the use of such old stamp papers invalidated the agreement itself for two reasons. **Firstly, it was illegal to use stamp papers purchased on different dates for execution of a document. Secondly, as the stamp papers used in the agreement of sale were more than six months old, they were not valid stamp papers and consequently, the agreement prepared on such "expired" papers was also not valid. We will deal with the second contention first. The Stamp Act, 1899 nowhere prescribes any expiry date for use of a stamp paper. Section 54 merely provides that a person possessing a stamp paper for which he has no immediate use (which is not spoiled or rendered unfit or useless), can seek refund of the value thereof by surrendering such stamp paper to the Collector *provided it was purchased within the period of six months* next preceding the date on which it was so surrendered. The stipulation**

> **of the period of six months prescribed in Section 54 is only for the purpose of seeking refund of the value of the unused stamp paper, and not for use of the stamp paper. Section 54 does not require the person who has purchased a stamp paper, to use it within six months. Therefore, there is no impediment for a stamp paper purchased more than six months prior to the proposed date of execution, being used for a document.**

25) The learned Appellate Court instead of rectifying the error committed by the learned trial court has gone a step further by returning a finding that the person who executed the rent deed in favour of the petitioner No.1 was not competent to do so as he was not the owner of the property. It needs to be noted that the Appellate Court was not deciding the title suit but was only required to examine the validity of the order passed by the trial court. The Appellate Court has rejected the rent agreement also on the ground that it was not exhibited by the party. Once the document was admitted by PW Parvaiz Ellahi to have been executed by him, there was no occasion for the learned Appellate Court to reject the document solely on the ground that the same was not exhibited. Once the contents of the document are proved, the document has to be admitted in evidence and merely non-exhibiting the document would not make the document inadmissible in evidence once its contents are proved. Reliance is placed upon the decision of the Apex Court in Narbada Devi Gupta v. Birendra Kumar Jaiswal, (2003) 8 SCC 745, wherein it has been held as under:

> **16.** Reliance is heavily placed on behalf of the appellant on the case of *Ramji Dayawala& Sons (P) Ltd.* [(1981) 1 SCC 80] **The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue"**. The

> situation is, however, different where the documents are produced, they are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the court. We find no force in the argument advanced on behalf of the appellant that as the mark of exhibits has been put on the back portions of the rent receipts near the place where the admitted signatures of the plaintiff appear, the rent receipts as a whole cannot be treated to have been exhibited as admitted documents.

26) Though this Court is not upsetting the impugned orders on the errors mentioned above but at the same time deemed it proper to take note of the errors committed by both the courts below.

Conclusion

27) In view of above, this Court finds it a fit case for invoking the powers under Article 227 of the Constitution of India to set aside the impugned orders. Accordingly, both the impugned orders dated 30.09.2023 passed by the learned Additional Sessions Judge, Budgam and 20.05.2022 passed by the Court of learned Chief Judicial Magistrate, Budgam, are set aside and the learned Chief Judicial Magistrate, Budgam is directed to return the application of the petitioners for presenting the same before the court having the territorial jurisdiction to adjudicate the matter.

28) Disposed of as above.

29) Copy of this order be sent to the learned trial court for information and compliance.

(Rajnesh Oswal)
Judge

SRINAGAR
29.03.2024
"Bhat Altaf-Secy"

Whether the order is reportable: ***Yes***